

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Communications Assistance for Law	)	ET Docket No. 04-295
Enforcement Act and Broadband Access and	)	
Services	)	RM-10865

**REPLY COMMENTS OF  
RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY**

**Introduction and Summary**

Rutgers, The State University of New Jersey respectfully submits these reply comments in response to the Further Notice of Proposed Rulemaking adopted in the above-captioned docket.<sup>1</sup> Rutgers University supports the comments filed by the Higher Education Coalition and submits this reply to amplify several points based on its own experience and circumstances.

The University supports the goals of the FCC to re-evaluate services provided by telecommunication carriers to ensure court ordered electronic surveillance is provided, but (1) the FCC should clarify that the private networks operated by colleges, universities, and research institutions are exempt from CALEA. There is no need to include higher education institutions within the CALEA framework because (2) Rutgers' experience with law enforcement surveillance requests demonstrates that there is no need to impose CALEA requirements on higher

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<sup>1</sup> *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, First Report and Order and Further Notice of Proposed Rulemaking, ET Docket No. 04-295, FCC 05-153 (rel. Sept. 23, 2005) ("*Order*").

education networks; and (3) applying CALEA to Rutgers' broadband network would have a significant impact on our ability to deliver on its core responsibilities of teaching, research and service.

## Discussion

### 1. **The FCC Should Clarify That Higher Education Networks Are Exempt from CALEA.**

Broadband networks operated by higher education and research institutions are not subject to CALEA because the statute expressly exempts "equipment, facilities, or services that support the transport or switching of communications for private networks." 47 U.S.C. § 1002(b)(2)(B). Although the Commission acknowledged in the *Order* that private educational networks are exempt from CALEA, it introduced ambiguity by stating: "To the extent . . . that [such] private networks are interconnected with a public network, either the PSTN or the Internet, providers of the facilities that support the connection of the private network to a public network are subject to CALEA . . . ." *Order* at ¶ 36, n.100. Rutgers University does provide Internet access, but does not make its network facilities generally available to the public and for certain does not provide these services to make a profit. Rutgers University is a public, not for profit educational institution and provides network services to university constituents for the purpose of teaching and learning, research and conducting university business.

The Commission should clarify that only commercial entities are covered by the language in footnote 100, in light of the clear statutory exemption of private network operators. Alternatively, the Commission should invoke its discretionary

authority under Section 102(8)(C)(ii) of CALEA to exempt higher education and research institutions from compliance with the forthcoming assistance-capability requirements. Such an exemption is necessary to remain faithful to congressional intent and to avoid imposing unnecessary burdens on colleges, universities, and research institutions.

Contrary to the suggestion by the Department of Justice that “no exemptions are appropriate based on the current record,” DOJ Comments at 11, the Higher Education Coalition has defined a narrow class of private network operators that should be exempt from CALEA for all the reasons contained in the Coalition’s comments and in these reply comments. The absence of existing compliance standards does not argue for postponing exemption determinations, but instead makes a prompt exemption more critical. Because the Commission has established an 18-month compliance deadline, Rutgers University must begin planning *now* to fund possible CALEA compliance. An immediate exemption for higher education and research institutions is needed.

## **2. Rutgers’ Experience Demonstrates the Absence of Any Need to Impose CALEA Requirements on Higher Education Networks**

Rutgers University has 50,000 students, 10,000 faculty and staff and is located on campuses in Newark, New Brunswick, Piscataway and Camden New Jersey. We cooperate and support law enforcement relative to any requests and inquiries that we receive from local or federal agencies. The University also maintains its own law enforcement unit- The Rutgers University Campus Police.

The campus police serves and protects the university community and is here to ensure that we have a safe environment.

All requests received from law enforcement are responded to diligently and appropriately. There are occasional subpoenas for log files or other types of data, but to the best of my knowledge we have not received any requests for electronic surveillance. The campus police, University Council, and the VP for information Technology are positioned to collaborate on requests such as these. We are well positioned to assist in any law enforcement request and have the resource to respond expeditiously.

Rutgers' experience helps demonstrate that existing procedures are more than adequate to ensure compliance with lawful surveillance requests, in light of both the infrequency of such requests and higher education institutions' history of full cooperation. Imposing burdensome new assistance-capability requirements under CALEA is simply not necessary to serve the interests of law enforcement.

**3. A Broad Application of CALEA Would Impose Significant Burdens on Rutgers and Divert Funds from Its Core Responsibilities**

As noted above, Rutgers University believes that CALEA does not apply to it under the plain terms of the statute and under the most reasonable reading of the *Order*. If the Commission were to apply the language in footnote 100 of the *Order* broadly and conclude that higher education networks such as Rutgers must comply

with some or all assistance capability requirements, such a ruling would impose significant and unwarranted burdens.

The proposed ruling does not provide implementation specifications and without this it is difficult to assess the full range of resources required to implement electronic surveillance. There is no guidance with respect to where CALEA-compliant devices must be deployed within the University's complex network, no information on hardware and software technologies and no guidance on how the University should handle privacy concerns and ensure compliance with federal privacy laws. The cost to comply could be excessive and a great burden to the university. The technologies are complex and network equipment is expensive. Last year we completed the RUNet project, which was a complete upgrade of our network. This four-year project cost close to \$100M. There are no network funds remaining to implement an electronic surveillance project and if we have to replace recently installed state of the art network equipment, it would not be a good use of University funds.

In short, if the FCC were to apply CALEA broadly to higher education networks — contrary to the text of the statute — such a ruling would impose significant burdens that far outweigh its putative benefits. The Commission accordingly should exempt higher education institutions and research networks from CALEA, if it considers them subject to the assistance-capability requirements in the first place.

## **Conclusion**

Rutgers, The State University of New Jersey respectfully requests that the Commission clarify that private networks operated by higher education and research institutions are not subject to CALEA, or alternatively grant an exemption under Section 102(8)(C)(ii) of CALEA.

Respectfully submitted,

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